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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Tampering and Defeat Device Civil Penalty Policy For Notices of Violations

FROM: Mary T. Smith, Director
Field Operations and Support Division

TO: Field Operations and Support Division Personnel

I. INTRODUCTION

This document describes the Field Operations and Support Division (FOSD) policy for determining penalties for violations of the antitampering and defeat device provisions of the Clean Air Act as amended in 1990. This policy applies to penalties assessed under FOSD's pre-litigation Notice of Violation (NOV) process. The policy follows the guidelines of the Agency's Policy on Civil Penalties, and A Framework for Statute-Specific Approaches to Penalty Assessments [EPA General Enforcement Policies # GM - 21 and 22 (The "EPA Policy")]. This document should be read in conjunction with the following FOSD guidance documents: Conduct of Settlement Negotiations, drafted January 1991, and the Guidance for the Use of Alternative Payment Terms in FOSD Settlements, drafted August 1991. For the assessment of civil penalties under the Consolidated Rules of Civil Procedure, 40 C.F.R. Part 22, see the Civil Penalty Policy for Administrative Hearings, issued January 14, 1993.

FOSD enforces a number of provisions under Title II of the Clean Air Act (Act), and its associated regulations. The tampering and the defeat device prohibitions are specified under section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3). Section 203(a) provides that the following acts and the causing thereof are prohibited -

"**(3)(A)** for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations ... prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser." For ease of reference this will be known as the **"tampering prohibition"**.

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"(3)(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations ..., and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use." For ease of reference this will be known as the **"defeat device prohibition"**.

A. STATUTORY PENALTIES

Tampering Prohibition

Under section 205 of the Act, any manufacturer or dealer[1] who violates the tampering prohibition, "(3)(A)", is subject to a civil penalty of not more than $25,000 per violation. Any person other than a manufacturer or dealer who violates the tampering prohibition is subject to a civil penalty of not more than $2,500 per violation. Any such violation with respect to the tampering prohibition constitutes a separate offense with respect to each motor vehicle or motor vehicle engine.

Defeat Device Prohibition

Also, under section 205 of the Act, any person who violates the defeat device prohibition, "(3)(B)", is subject to a maximum civil penalty of $2,500 per violation. Any such violation with respect to the defeat device prohibition constitutes a separate offense with respect to each part or component.

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[1] According to section 216 of the Act, 42 U.S.C. § 7550, a manufacturer is "any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce." A dealer is "any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser." See section 216 for additional definitions, e.g., motor vehicle, new motor vehicle, ultimate purchaser and commerce.

II. OVERVIEW

A. The Framework of the EPA Policy

The EPA Policy establishes deterrence as the primary goal for penalty assessment. The policy also recognizes that penalty assessment should provide for fair and equitable treatment of the regulated community and for swift resolution of environmental problems.

The EPA Policy specifies that penalties should be established and adjusted based upon a number of factors, including the gravity of the violation, the economic benefit or savings resulting from the violation, the willfulness of the violation, the violator's degree of cooperation, history of noncompliance, ability to pay, and other factors unique to the case. Under the EPA Policy, penalties are set by first calculating the "initial penalty target figure" (the penalty assessed in the Notice of Violation ("NOV")), and second by calculating the "adjusted penalty target figure" (the Agency's final settlement figure). Each penalty assessment includes appropriate consideration of the above factors both prior to the beginning of the case and during case negotiations.

B. General Application of the EPA Policy to Tampering and Defeat Device Violations

FOSD prosecutes violations of the tampering and defeat device prohibitions by issuing a NOV which includes a proposed penalty. The proposed penalty is analogous to the initial penalty target figure under the EPA Policy. Following issuance of the NOV, settlement negotiations are conducted with the violator to reach a final settled penalty. The final settled penalty is analogous to the adjusted penalty target figure under the EPA Policy. If no settlement is reached, the case normally is referred to the Department of Justice ("DOJ"), where additional settlement negotiations may take place. Complaints filed by the DOJ in court generally seek the maximum statutory penalty.

Also, under the Clean Air Act as amended in 1990, in lieu of referring the case to the DOJ for litigation, the Administrator may assess any civil penalty prescribed in section 205(a), except the maximum amount of the penalty sought against each violator in a penalty assessment proceeding may not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. See the Consolidated Rules of Civil Procedure, 40 C.F.R. Part 80.22, and FOSD's Civil Penalty Policy for Administrative Hearings, issued January 14, 1993.

The proposed penalty for tampering and defeat device violations is based upon the gravity of the violation, the violator's history of noncompliance, and the size of the violator's business. Following initiation of the enforcement action, the proposed penalty may be reduced up to forty percent based upon a number of factors, including the actions taken to remedy the violation and to prevent future violations, the violator's degree of cooperation in the investigation and settlement negotiations, and the violator's economic benefit or savings (if any) resulting from the violation. Unlimited adjustments are possible for financial hardships and special circumstances.

III. CALCULATING THE PROPOSED PENALTY

A. Gravity of the Violation

The primary concern in determining the gravity of the tampering violation or defeat device violation is the likely increase in vehicle emissions which may result from the violation. Acts of tampering with, or defeat devices which render inoperative, primary emission control systems or specified major emission control components[2] are presumed to result in the largest increases in emissions. Therefore, under this policy, the greatest gravity (and the largest penalties) are assigned to acts of tampering or defeat devices which involve primary or specified major emission control parts. A lesser gravity (and smaller penalties) are assigned to acts of tampering or defeat devices which involve emission related parts which are presumed to cause smaller increases in emissions.

This policy also presumes that certain acts of tampering or defeat devices may operate to cause a cumulative increase in vehicle emissions. Violations involving multiple emission control parts are presumed to cause a larger increase in vehicle emissions than violations involving only one emission control part. In addition, violations involving onboard emissions diagnostic systems ("OBD-systems") are presumed to cause a larger increase in vehicle emissions because the disabling of the OBD-system permits a failure in the vehicle's emission control equipment or system to go undetected and unfixed. Any excessive vehicular emissions due to such failure may persist over a longer period of time. Therefore, under this policy, the greatest gravity (and the largest penalties) is also assigned to acts of tampering with or defeat devices which render inoperative multiple emission control parts or the OBD-

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[2] Specified major emission control components means only a catalytic converter, and electronic emissions control unit, an onboard emissions diagnostic device, and any other pollution control part which may be designated by the Administrator. See section 207 of the Clean Air Act, 42 U.S.C. § 7541 as amended in 1990.

system.

The following systems or parts are installed primarily for emission control or emission control diagnostics, and tampering with them will likely cause a large increase in emissions. Therefore, tampering with or manufacturing or selling devices which bypass or defeat these systems or parts is considered a level "A" violation.

Exhaust Gas Conversion:	**Catalytic Converter, Oxygen Sensor**
Secondary Air Injection:	**Air Pump, Diverter Valve, Pulse Air Valve**
Evaporative System:	**Evaporative Canister, Purge Valve**
Exhaust Gas Recirculation System:	**EGR Valve, EGR Transducers, EGR Vacuum Lines**
Onboard Emissions Diagnostic Systems:	**Emission Control Diagnostics**
Fuel Metering System:	**Electronic Control Module, Fuel Injectors**

Tampering or defeat devices which result in only partial deactivation of the above systems or parts, tampering which involves any other system or part not listed above, or tampering which involves the replacement of existing exhaust system components where the converter had been removed previously are all considered level "B" violations.

Partial deactivation of certain emission controls, such as replacing a 3-way converter with a 2-way converter, will cause the vehicle to pollute significantly less than the total deactivation of the catalytic converter. Similarly, replacing a rusted out single or dual exhaust system on a vehicle with the converter already removed will have a minimal adverse effect on emissions, however, it is still a violation under current EPA policy. The above actions would, therefore, more appropriately be level "B" violations based on their lesser emissions impacts while the act of removing or totally deactivating a catalytic converter would be a level "A".

B. Violator's History of Noncompliance and Size of Business

As provided in the EPA Policy, this policy provides higher penalties for a party with a history of noncompliance with the tampering or defeat device provisions.

Where a party has previously violated the tampering or defeat device provisions, this is usually clear evidence that the party was not deterred by the Agency's enforcement action. Therefore, the penalty shall be increased, unless the previous violation was caused by factors entirely out of the control of the violator. A prior violation is any noncompliance with the tampering or defeat device provisions for which a formal enforcement response has occurred, i.e., a NOV, warning letter, settlement agreement, complaint, or final order, providing the enforcement response was not dropped or judgment was not in favor of the party. Where a party operates multiple facilities, it may be difficult to determine whether a previous instance of noncompliance should trigger an increased penalty. In making this determination, FOSD shall consider who in the organization had control or oversight responsibility for the conduct resulting in the violation. In situations where the same person(s) or organizational unit had or reasonably should have had control or oversight responsibility for the violative conduct, the violation should be considered part of the compliance history of that regulated party. FOSD shall also consider whether a party changes operators or shifts responsibility for compliance to different groups as a way of avoiding penalties, and whether there is a consistent pattern of noncompliance or a corporate-wide indifference to environmental protection. In such instances, where there is a shifting of responsibility to avoid liability or a pervasive indifference to the tampering or defeat device prohibitions, the violation should be considered part of the compliance history of that regulated party.

In order to create a fair and equitable deterrent, the business size or operating budget of the violator must be considered. Where the violator is a business entity (sole proprietor or corporation), size is expressed in terms of the violator's annual gross income (i.e., the total business revenues from the business entity which gave rise to the violation). Where the prior fiscal year is not representative of the violators historical business size, revenues or income from the prior three to five years should be evaluated. Where the violator is a municipal violator, size is expressed in terms of the violator's operating budget, instead of gross income. Municipalities, unlike corporations, derive their income from public revenues. In addition, only the very smallest municipalities are likely to have an operating budget below three million dollars ($3M). Therefore, in distinguishing the size of municipalities, only those municipal violators with an annual operating budget of at least ten million dollars ($10M) are subject to the larger penalties.

Table 1 reflects the foregoing factors, and specifies the proposed penalty for violations of section 203(a)(3), except for violations of the tampering prohibition "(3)(A)" committed by any motor vehicle manufacturer or dealer, See Table 2. Table 1 shall be used to the extent that it allows for deterrence and recovery of the violator's economic benefit. Accordingly, the lowest amount used to calculate the penalty cannot be less than twice the violator's economic benefit realized for that violation, see VIII, Penalty Example Calculations.

TABLE 1

Proposed Penalty Per Violation

NUMBER OF VIOLATIONS	VIOLATION LEVEL	PRIORS	SIZE OF BUSINESS (OR, MUNICIPAL OPERATING BUDGET) UNDER $ 3M (UNDER $10M)	$ 3M OR OVER ($10M OR OVER)
1st 25	A	1+	$2,000	$2,500
		0	$1,500	$2,000
	B	1+	$1,500	$2,000
		0	$1,000	$1,500
NEXT 50	A	1+	$1,000	$1,500
		0	$ 500	$1,000
	B	1+	$ 500	$1,000
		0	$ 350	$ 750
REMAINDER	A	1+	$ 200	$ 300
		0	$ 100	$ 200
	B	1+	$ 100	$ 200
		0	$ 50	$ 150

C. Proposed Penalty for Manufacturer and Dealer Tampering

Under section 205 of the Act, only motor vehicle manufacturers and dealers are subject to a penalty of $25,000 for violating the tampering prohibition "(3)(A)". In addition, section 205 does not distinguish the business size of a dealer from a manufacturer, or when the violation was committed (prior to or after the sale and delivery of the vehicle to the ultimate purchaser). Accordingly, Table 2 reflects the foregoing, and specifies the proposed penalty for acts of tampering by a motor vehicle manufacturer or dealer.

TABLE 2

Motor Vehicle Manufacturer or Dealer Penalty Table

Proposed Penalty Per Violation

NUMBER OF VIOLATIONS	VIOLATION LEVEL	PRIORS	SIZE OF BUSINESS UNDER $5M	$5M OR OVER
1st 25	A	1+	$15,000	$20,000
		0	$ 5,000	$10,000
	B	1+	$10,000	$15,000
		0	$ 2,500	$ 5,000
NEXT 50	A	1+	$ 3,000	$ 4,000
		0	$ 1,500	$ 2,000
	B	1+	$ 2,000	$ 2,500
		0	$ 1,000	$ 1,500
REMAINDER	A	1+	$ 1,000	$ 2,000
		0	$ 500	$ 1,000
	B	1+	$ 500	$ 1,250
		0	$ 350	$ 750

In some instances, a violator may have violated both the tampering and the defeat devices prohibition. Where the separate violation is an integral part of the other violation, EPA shall exercise its enforcement discretion in determining whether to merge the violations or assess a penalty for both violations.

D. Penalties for Recordkeeping and Retention Violations of EPA's Aftermarket Catalytic Converter Policy

EPA's enforcement policy of August 6, 1986 ("Policy") regarding the sale and use of aftermarket catalytic converters requires proper record-keeping and retention as a condition to the installation of aftermarket catalytic converters. Therefore, if a shop installs aftermarket catalytic converters, it is required to have proper documentation reflecting installation of such converters. The lack of such accompanying documentation will result in a violation since it is required to install an OEM catalytic converter if all requirements of the aftermarket catalytic policy are not satisfied.

Nature of Violations

The types of potential record-keeping violations are as follows:

1. Invoice does not include each of the following: customer's name and complete address; vehicle's make, model year and mileage; and reason for replacement.

2. The repair facility does not have a signed statement by the vehicle owner and installer, or state/local program representative concerning the reason for the replacement of the catalytic converter.

3. Copies of invoices are not retained for six months.

4. The removed converter is not retained for 15 working days.

5. The removed converter is not properly marked to identify the vehicle from which it was removed.

6. Required warranty card is not filled out by installer and given to the customer (for new aftermarket converters only).

In order to compute the penalty for record-keeping and retention violations, it is necessary to determine the number of aftermarket converters that were installed that did not have accompanying proper documentation and/or were not retained as required over the previous six month period. The following data can be used to help ascertain the number of installations involved: invoices reflecting converter replacement, information supplied by an aftermarket converter supplier as to the number of converters provided to the shop, statement(s) from employee(s) or past employee(s) as to the number of converters installed, converters found at the shop unmarked, etc.

Penalty Determination

This Policy bases penalty amounts on the number of violations, egregiousness of the violations, size of the business, and history of prior violations.

Violations of this type are divided into two egregiousness levels.

Level 1: The records are so deficient that it cannot be determined with certainty either from the service invoice or by further investigation which installations were misapplications over the previous six month period as a result of deficiencies in certain significant requirements (e.g., owner's name and complete

address; vehicle's make, model year and mileage; reason for replacement; and the warranty card completed accurately). These include the deficiencies listed in items 1, 3, and 6 above. Every record reflecting such converter work and/or every improperly labeled converter is considered a violation for purposes of the proposed penalty computation.

Level 2: The records reflect proper applications (i.e., the proper catalyst types - two-way, three-way or three-way with air - were installed). However, there is insufficient supporting data as required in the Policy, to demonstrate the converter was removed under appropriate circumstances. These include the deficiencies listed in items 2, 4, or 5 above. Every improper record-keeping violation which is documented as having occurred during the previous six months is considered a violation for purposes of the proposed penalty computation.

TABLE 3

Recordkeeping and Retention Penalty Table

Violation Level	No. of Prior Violations	Size of Business	
		Under $3M	$3M or Over
1	1+	$400	$500
	0	300	400
2	1+	$200	$300
	0	100	200

The proposed penalty amount should be determined by multiplying the number of violations by the appropriate figure from the above table. The proposed penalty can be a combination of Level 1 and Level 2 violations. Penalties for new car dealers are determined by multiplying the above calculated figure by two. The maximum proposed penalty for Level 2 violations is $10,000, and $15,000 for Level 1 violations or violations that are a combination of Level 1 and Level 2.

The scenario may exist where shop records indicate the purchase of aftermarket catalytic converters and/or statements from shop employees confirm the installation of such converters, but few or none of the specific installation records exist. In this situation it is impossible to determine that the installations were performed properly, since records do not exist of the installations. Therefore, the installation of aftermarket catalytic converters in this situation are essentially level 1 violations. The inspector should document through shop records and/or statements by the shop owner or employees that multiple (more than one) aftermarket catalytic converter installations have been performed by the shop. If such evidence is documented, and a reliable number of record-keeping violations cannot be documented,

then the minimum penalty amount should be $6,000 for new car dealers and $4,000 for all other regulated parties. These penalties would be supportable in litigation if necessary because each is less than the maximum statutory penalty for at least two violations.

IV. ADJUSTMENTS TO THE PROPOSED PENALTY

The EPA Policy specifies that penalties should be evaluated for adjustment based upon degree of cooperation/noncooperation, ability to pay, willfulness/lack of willfulness, and other unique factors specific to the case. This policy provides for these adjustments. Violators bear the burden of justifying any adjustments in their favor. All adjustments should be reflected in the case file, adequately supported by the facts of the case and discussed fully in the action memorandum that accompanies the proposed settlement agreement.

A. Degree of Cooperation, Lack of Willfulness, and Actions to Remedy the Violation

This policy allows mitigation of the proposed penalty of up to forty percent as an incentive for the violator to cooperate in the investigation and negotiations, and to correct the violation promptly. The greatest mitigation should be given where the violation is not willful, the violator fully cooperates, and the violator corrects all violations immediately upon discovery of the violation. An act should be considered willful if there is clear and convincing evidence that the violator was aware of the law and chose to ignore it.

For tampering violations, correction generally means returning the vehicle to compliance with that vehicle's EPA-certified configuration with respect to the tampered system(s) or part(s) (the violator to bear the cost), and taking action to ensure that similar violations will be less likely to occur in the future. In correcting the violation, new original equipment parts usually must be installed. Where the violation is for installation of an improper aftermarket part, such as an aftermarket replacement converter (assuming the vehicle is eligible to have an aftermarket converter installed), correction should include installation of the proper aftermarket converter. The degree of penalty mitigation will be related to the extent to which the violation and the conditions which caused the violation are corrected.

Violators are also normally expected to identify and correct tampering violations beyond those named in the NOV. Correction of these additional violations normally is required in order for a violator to qualify for a reduction under this factor.

For defeat device violations, corrections generally means recalling the devices and destroying or converting the devices to some legitimate use.

The violator's cooperation during the investigation, negotiation and settlement phases of a case may result in a penalty adjustment. A violator is expected to provide access to records and premises and to not interfere with the investigation. In addition, the violator should identify and provide information about other parties who were involved in the violation. Failure to cooperate in an investigation, attempting to hide records or evidence of violations, or not cooperating in any continuing investigation should be reflected in the adjustment for this factor.

B. Financial Hardship Adjustment

The Agency generally will not seek penalties which are clearly beyond the means of the violator. However, it is important that the regulated community not view the violation of environmental requirements as a way of aiding a financially troubled business. Furthermore, some violations are so outrageous so as to render any mitigation inappropriate. For example, it is unlikely that FOSD would reduce a penalty based upon financial hardship where a violator refuses to correct its violations or take steps to prevent future violations. The same would be true for a violator with a long history of previous violations of environmental laws, where there are indications that many more violations exist than those alleged in the NOV or where the violator's actions were clearly willful in nature. Therefore, FOSD reserves the option, in appropriate circumstances, of not reducing the final penalty as a result of financial hardship even though that penalty may put a company out of business.

A financial hardship claim normally will require a significant amount of financial information from the violator. The burden of demonstrating inability to pay, like all mitigating factors, rests on the violator. If the violator fails to provide sufficient information in a timely manner, then the prosecution team cannot give any consideration to this factor.

Where a financial hardship claim is adequately established, FOSD may, at its discretion and based upon its review of all the equities of the case including the financial hardship, further adjust the penalty. The preferred approach to such an adjustment is allowing a delayed payment schedule, or granting an unusually favorable alternative payments package. However, as a last resort, FOSD may agree to an extraordinary penalty reduction for this factor.

A case may arise in which equity cannot be served by adjusting the penalty within the normal limits of this policy. In such a case, FOSD may grant extraordinary mitigation.

The burden of establishing the need for extraordinary adjustment of the penalty rests on the violator. In order to meet this burden the violator must present evidence of: (1) the facts of the case; (2) why the adjusted penalty is inequitable; (3) why the criteria for adjustment are insufficient; and (4) how the public interest is protected or served by an extraordinary adjustment in the penalty.

C. The Adjusted Penalty Target Figure

When the above adjustments have been made to the proposed penalty, the result is the adjusted penalty target figure. This is the amount of money which the violator must pay to settle the case, i.e., it is the bottom line settlement amount.

V. ALTERNATIVE PAYMENTS

It is FOSD's policy to allow violators to satisfy a portion of the penalty by making payments to support programs which educate the public regarding motor vehicle caused air pollution and the laws for its control. Such credit projects encourage compliance with these laws, and therefore advance program goals beyond the mere deterrence effect of paying penalties into the federal treasury. The Agency's supplemental environmental projects program is currently undergoing review and is therefore subject to change. Any use of alternative payments should conform with the Agency policy on the use of Supplemental Environmental Projects in EPA settlements.

VI. ADJUSTMENT AFTER INITIATION OF LITIGATION

When an NOV is issued and a violator fails to settle the case, EPA may refer the case to the United States Department of Justice (DOJ) for prosecution in federal district court, or EPA may assess a civil penalty administratively against the violator. The administrative complaint civil penalty is assessed under the Civil Penalty Policy for Administrative Hearings, issued January 14, 1993.

When a case is referred to DOJ, the normal recommendation is to prosecute for the maximum statutory penalty; $25,000 for any violation of § 203(a)(3)(A) by a motor vehicle manufacturer or dealer, $2,500 for any violation of § 203(a)(3)(A) by anyone else, and $2,500 for any violation of § 203(a)(3)(B).

The opportunity remains, however, for the parties to settle a case at any time prior to judgment. The minimum acceptable settlement amount after referral normally will be no lower than the NOV proposed penalty. The minimum acceptable post-referral settlement should be based upon consideration for all relevant factors, including the amount of the pre-referral settlement offer,

the severity of the violation, the strength of the evidence, financial hardship to the respondent, the amount of government resources necessary to litigate, and the likely treatment the case would receive in the particular court with venue.

VII. MISCELLANEOUS

The policies and procedures set out in this document are intended solely for the guidance of government personnel. They are not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

This policy applies to civil enforcement of the tampering and defeat device provisions of the Clean Air Act and does not apply in any way to potential criminal enforcement.

VIII. PENALTY EXAMPLE CALCULATIONS

Following are examples of application of this policy to hypothetical factual situations.

Example 1.

EPA discovers that Company X, with a business revenue of $2 million and no prior violations, manufactured 642 catalytic converter replacement pipes. This constituted 642 violations of the defeat device prohibition. According to the company's catalog and sales receipts, the pipes sell for $20 each.

Using Table 1, the penalty would be calculated as follows:

Number of Violations		Penalty Amount		
25	x	$1,500	=	$ 37,500
50	x	500	=	25,000
567	x	100	=	56,700
	Proposed Penalty		=	$119,200

Example 2.

EPA discovers that Company A, with a business revenue of $2.5 million and no prior violations, manufactured and sold 950 defeat devices which disabled the car's air pump. This constituted 950 violations of the defeat device prohibition. The devices were manufactured and sold for a profit of $250 each.

Using Table 1, the penalty would be calculated as follows:

Number of Violations		Penalty Amount		
25	x	$1,500	=	$ 37,500
50	x	. 500	=	25,000
875	x	100	=	87,500
				$150,000

However, the penalty of $100 for the last 875 violations is less than twice the violator's economic benefit. Therefore, the proposed penalty should be based on the lowest figure on the table which exceeds twice the profit as proposed for in Table 1, i.e. $500. Thus, the proper penalty calculation would be as follows:

25	x	$1,500	=	$ 37,500
925	x	500	=	462,500
Proper Proposed Penalty			=	$500,000

Example 3.

EPA discovers that a motor vehicle manufacturer, MVM, with business revenue of $6 million and 1 prior violation manufactured 500 defeat devices which alter the vehicle's air fuel mixture and cause accelerated failure of the catalytic converter. These parts were designed to replace the stock cal pak, an element of design of the motor vehicle. MVM replaced 150 stock cal paks with defeat devices prior to selling the vehicles to the ultimate purchaser, replaced 100 after selling and delivering the vehicles to the ultimate purchaser, and sold 50 of the devices to auto parts stores and individuals for a profit of $600 each. The remaining 200 devices are in MVM's inventory. Assuming that this is a level "B" violation, the penalty would be calculated as follows:

Using Table 1, the penalty would be calculated as follows:

a. Penalty for manufacturing 500 defeat devices in violations of section 203(a)(3)(B):

Number of Violations		Penalty Amount		
25	x	$2,000	=	$ 50,000
475	x	$1,000	=	$475,000
	Proposed Penalty		=	$525,000

Using Table 2, the penalty would be calculated as follows:

b. Penalty for MVM replacing 250 stock cal paks with defeat devices.

Number of Violations		Penalty Amount		
25	x	$15,000	=	$375,000
50	x	$ 2,500	=	$125,000
175	x	$ 1,250	=	$218,750
	Proposed Penalty		=	$718,750

In this example, MVM has violated both the tampering and the defeat device prohibition. EPA may exercise its enforcement discretion and merge the violations, thereby, assessing a penalty only for manufacturing 500 defeat devices.

Example 4.

EPA discovers that Company A, with a business revenue of $2.5 million and no prior violations, is installing aftermarket converters but maintains incomplete records. That is, 65 records do not include the vehicle make, year, converter part number, and vehicle owners' address. The records only include the vehicle owners' name and type of work performed, i.e., converter replacement. Therefore, each of the 65 incomplete records are considered Level 1 violations.

Using Table 3, the penalty would be calculated as follows:

Number of Violations		Penalty Amount		
65		$300	=	$19,500

Since this is the first offense for Company A, and no evidence is apparent of additional tampering, other than the insufficient record-keeping violations, the maximum proposed penalty amount applies to the proposed penalty amount, if it is lower than the computed proposed penalty. Therefore, since the computed proposed penalty is greater than the maximum proposed penalty amount for Level 1 violations, the maximum proposed penalty amount of $15,000 applies.

Example 5.

EPA discovers that Company Y, with a business revenue of $2.5 million and 2 prior violations, installed dual pipes and removed the catalytic converter from 10 of MPD's vehicles, and disconnected the PCV valves on 10 of DCNG's vehicles. This constituted 10 level A, and 10 level B tampering violations. Neither MPD nor DCNG knew that their vehicles had been tampered with.

Using Table 1, the penalty would be calculated as follows:

Number of Violations			Penalty Amount		
10	Level "A"	x	$2,000	=	$20,000
10	Level "B"	x	$1,500	=	$15,000
	Proposed Penalty			=	$35,000

Example 6.

EPA discovers that Dennis Speed Shop, with a business revenue of 350,000 and no prior violations, removed the PCV valve and the Heated Air Intake tube from 25 vehicles. This constituted 25 violations of the tampering prohibition.

Using Table 1, the penalty would be calculated as follows:

Number of Violations						
25	[Level "A"[3]]	x	$1,500	=	$37,500	

[3] The greatest gravity and the largest penalty are also assigned to multiple level B violations.